

## **HARNESSING THE POWER OF LABOUR LAW AND SOCIAL SECURITY LAW TO ACHIEVE THE GOAL OF FORMALIZING LABOUR MARKETS IN THE BRICS COUNTRIES**

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*The Declaration by the Labour and Employment Ministers of the BRICS countries, "Quality Jobs and Inclusive Employment Policies," guarantees that formalization of labor markets is a global priority for the BRICS countries, as informal employment hampers productivity, potential economic growth and efforts to improve the welfare of populations worldwide. Taking into account this strategic goal, the authors analyze the informal employment processes in the BRICS countries and speculate on the transition from informal to formal employment. The article addresses the issues of inhomogeneous notional ranges used to define informal employment and recommends that the possibilities provided by labor legislation and government employment policy (such as increasing the number of formal working places and dynamic development of labor legislation directed at regulation of new employment forms) be used to tackle these issues. The potential of the social security right for achieving the goals of transition to a formal economy and social security coverage is characterized in detail; various legal forms of social security (for example, government social security, social insurance (mandatory as well as voluntary) and social support) are analyzed; and the possibilities of their application to informal workers in the BRICS countries are defined.*

**Keywords:** informal economy; informal employment; informal workers; social security; social insurance; legal regulation; BRICS.

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## Introduction

The informal economy now employs more than 6 out of every 10 workers, while the International Labour Organisation (ILO) terminology uses the term “worker” to refer to all employed workers, including wage workers, own-account workers (whether or not employing hired labor) and unpaid workers in family businesses. Informality is a comprehensive and significant phenomenon that is growing in many countries around the world.<sup>1</sup>

The broad scale of the informal economy in all its manifestations is a major challenge to the realization of workers’ rights, including fundamental social and labor principles and rights, and has a negative impact on public revenues and governments’ scope of action, particularly with regard to economic, social and environmental policies in national and international markets. It should be noted that most people find themselves in the informal economy solely due to a lack of employment and livelihood opportunities in the formal economy, particularly in times of crisis, such as the COVID-19 pandemic, and are especially in need of legal

<sup>1</sup> ILO, *Transition from the Informal to the Formal Economy: Theory of Change* (2021) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/briefingnote/wcms\\_768807.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_768807.pdf).

and social protection. Informal employment has multiple causes, including those related to governance issues, and public policy can speed up the process of transition to the formal economy in the context of social dialogue.

### **1. Development of Labor Markets in the Framework of Transition from the Informal to the Formal Economy: International Law Aspect**

Trends in the spread of the informal employment prompted the ILO to adopt Recommendation 204, "Concerning the Transition from the Informal to the Formal Economy" (hereinafter referred to as ILO Recommendation 204) on 12 June 2015, which aims to promote the transition of workers from the informal to the formal economy, encourage the creation, preservation and viability of enterprises as well as decent jobs in the informal economy and prevent the informalization of jobs in the formal economy.

In this Recommendation, the term informal economy refers to the economic activities of workers (and economic units) that are, in law or in practice, not covered or insufficiently covered by formal arrangements and do not involve illegal activities, for example, production and trafficking of drugs, illicit manufacturing and trafficking of firearms, human trafficking, and money laundering.

According to ILO Recommendation 204, the member states should provide social security, maternity protection, decent working conditions and minimum wages to all workers in the informal economy; as well as establish and maintain social protection and social insurance for persons employed in the informal economy and their families. Therefore, all employed workers shall be subject to legislation on labor, social security, taxation regardless of the type and form of employment, and as a result they shall receive relevant guarantees and social protection as well as become tax payers. As a result, informally employed workers shall be covered by the relevant legal regulation and provided with legal protection (including social insurance and the minimum guarantees established by the national labor legislation). Therefore, the legal status of the employed worker is defined by a single legal regulation that meets the minimum national standards. It is established that workers in the informal economy are more vulnerable physically and financially, and therefore they are excluded or fall outside the scope of the social security systems and legislation on occupational safety and health, maternity protection and other provisions of labor law.<sup>2</sup> In addition to the lack of legal regulation, informal employment represents an acute social problem, as it is characterized by a lack of decent work and a disproportionately high share of the working poor. There are

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<sup>2</sup> ILO, *The Informal Economy in Africa: Promoting Transition to Formality: Challenges and Strategies* (2009) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_policy/documents/publication/wcms\\_127814.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/publication/wcms_127814.pdf).

enough empirical findings showing that poverty jeopardizes workers in the informal economy more than those in the formal economy.<sup>3</sup>

The Ministers of Labour and Employment of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China, and the Republic of South Africa met on 25–26 January 2016 in Ufa (the Russian Federation). During the first meeting of the Ministers of Labour and Employment of the BRICS countries, they discussed new areas of cooperation in labor and employment, social security and social inclusion, public policy. Their work resulted in the BRICS Labour and Employment Ministers' Declaration on "Quality Jobs and Inclusive Employment Policies." Formalization of labor markets is a global priority, as well as a priority for all the BRICS countries, as informal employment stifles productivity, potential economic growth and efforts to improve people's well-being.

The BRICS countries agreed to follow ILO Recommendation 204 in facilitating the transition of workers from the informal to the formal economy; in promoting the creation, preservation and stability of enterprises and decent jobs in the formal economy and in ensuring coherence of policies in macroeconomics, employment, social protection, and other social programs, as well as preventing the informalization of the formal economy.

The reduction of informality in the labor market is expected to be achieved through the creation of high-quality jobs in the formal economy. The basis for developing high-quality formal jobs and for increasing formal employment includes integration of policies that promote job creation and income opportunities in the formal economy; modernization of enterprises and performance improvement; investing in skills that meet the requirements of the formal economy; expanding labor inspection activities; improving working conditions and safety; enforcing workers' rights and their protection and expanding adequate social protection for all workers.

On 21 November 2016, the Russian Federation and the ILO signed the Program of Cooperation for 2017–2020 (hereinafter referred to as the Program of Cooperation) which is based on the membership of the Russian Federation in the ILO and other international organizations. Its objectives are to promote further development of social and labor relations in such areas as the expansion of employment, social protection and social security, working conditions and safety, international labor standards and fundamental principles and rights at work, which results in the transition from the informal to the formal economy by creating high-quality jobs.

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<sup>3</sup> ILO, Decent Work and Informal Economy, Report VI, International Labour Conference, 90<sup>th</sup> Session, Geneva (2002) (Mar. 5, 2022), available at <https://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>; ILO, Efficient Growth, Employment and Decent Work in Africa: Time for a New Vision (2011) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_164482.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_164482.pdf); United Nations Research Institute for Social Development, Combating Poverty and Inequality: Structural Change, Social Policy and Politics (2010) (Mar. 5, 2022), available at <https://www.bristol.ac.uk/poverty/downloads/keyofficialdocuments/UNRISD%20Combating%20Poverty.pdf>; The World Bank, World Development Report: Employment (2013).

As a result, the formalization of the economy is a process in which both international organizations and specific states are interested. The ways of transition to the formal economy is largely dependent on national conditions, such as prevailing types of economic activity, labor market structure and national legislation. In order to develop a national strategy of formalization, it is necessary to have an understanding of the forms and factors of informality that exist in a particular state, as well as how they are combined depending on the category of employee, the type of enterprises, etc. Formalization strategies can be individual and aimed at specific sectors of the economy, categories of employed workers, types of enterprises, or activities or they can target several aspects at once. An example of such a strategy is an experiment that was first held in some regions of the Russian Federation and later spread throughout the state. In this experiment, the category of own-account workers as tax payers on professional income<sup>4</sup> was introduced into Russian law in order to increase state revenues. However, employers saw their own interest in it and perceived the innovation as a call to action and began to register their employees as own-account workers concluding fictitious contracts of rent for their workplaces with those workers who perform their labor functions on the territory of the employer.<sup>5</sup> This is especially dangerous given that, according to expert surveys in the EU,<sup>6</sup> sham or fake own-account work is considered to be the most precarious forms of employment from the point of protecting the rights of workers. Guided by ILO Recommendation 204 and the BRICS Labour and Employment Ministers Declaration on “Quality Jobs and Inclusive Employment Policies,” state authorities have already announced that they will combat abuses of employers in terms of transferring workers to the “own-account work” regime, but such announcements are made by the Federal Tax Service, not by the State Labour Inspectorate.<sup>7</sup> Unfortunately, this demonstrates once again that the state’s interest in tax collection currently prevails over the performance of the social function of the state.

<sup>4</sup> Федеральный закон от 27 ноября 2018 г. № 422-ФЗ «О проведении эксперимента по установлению специального налогового режима «Налог на профессиональный доход» // СПС «КонсультантПлюс» [Federal Law No. 422-FZ of 27 November 2018. On Carrying Out Experiments on the Establishment of the Special Tax Regime “Tax on Professional Income,” SPS “ConsultantPlus”] (Mar. 5, 2022), available at [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_311977/](http://www.consultant.ru/document/cons_doc_LAW_311977/).

<sup>5</sup> Бозушевский Р. Работодатели начали оформлять сотрудников как самозанятых // Daily Storm. 9 января 2019 г. [Rostislav Bogushevsky, *Employers Have Begun to Register Employees as Own-Account Workers*, Daily Storm, 9 January 2019] (Mar. 5, 2022), available at <https://dailystorm.ru/obschestvo/rabotodateli-nachali-oformlyat-sotrudnikov-kak-samozanyatyh>.

<sup>6</sup> Sonia McKay et al., *Study on Precarious Work and Social Rights*, carried out for the European Commission (VT/2010/084), Working Lives Research Institute, Faculty of Social Sciences and Humanities, London Metropolitan University (April 2012), at 77 (Mar. 5, 2022), available at <https://ec.europa.eu/social/BlobServlet?docId=7925&langId=en>.

<sup>7</sup> Бутрин Д. Недорого, но прозрачно. ФНС вычислит попытки перевести сотрудников в режим налога на профессиональный доход // Коммерсантъ. 15 января 2019 г. [Dmitry Butrin, *Low-Priced, but Transparent. Federal Tax Service Will Track Down Attempts to Transfer Employees to the Regime of Tax on Professional Income*, Kommersant, 15 January 2019] (Mar. 5, 2022), available at <https://www.kommersant.ru/doc/3854185>.

This position of state authorities clearly demonstrates the willingness of states that receive less than due taxes and insurance premiums as a result of the operation of the informal economy, to receive the necessary revenue for the budget. Moreover, it makes no difference to the state who will act as a taxpayer – an employee in an employment relationship, or any other person. Businesses (employers) that use informal employment, as a rule, aim to reduce fiscal costs (the burden of taxes and insurance premiums for the employee). In such a situation, a person performing a particular production function through his or her own labor is deprived of guarantees derived from the legal status of an employee and his or her position in society becomes vulnerable and socially unprotected both in connection with this function (no one guarantees him or her safe working conditions and decent pay) and in the event of loss of ability to work. It is not possible to change this situation without appropriate legal and management decisions.

Therefore, the formalization of the economy is a process everyone should be interested in. Formalization increases the welfare of society as a whole and of employed workers; it provides economic stability; contributes to equality; reduces poverty and maintains social stability. The formalization of enterprises and other economic entities due to productivity growth and improved access to markets increases their competitiveness. Clearly, the state is more interested in the formalization of employment, as it allows the state to increase income in the form of taxes and insurance premiums as a result of the transition from the informal to the formal economy.

## **2. Informal Employment as a Manifestation of the Informal Economy in the BRICS Countries**

The BRICS countries have seen an increase in the number of informal workers. Informal workers account for nearly 50 percent in Brazil and China, and nearly 90 percent in India.<sup>8</sup>

Experts note the heterogeneity of informal employment and the influence of various factors on it:

- age – the level of informality is higher among young and elderly persons. Globally, three out of four young (77.1 percent) and elderly persons (77.9 percent) are employed in the informal sector;
- level of education – across the globe, when the level of education rises, the level of informality decreases. Persons with secondary and higher education are less likely to be employed in the informal sector compared to workers who either have no education or have only primary education;

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<sup>8</sup> OECD, Labour Markets in Brazil, China, India and Russia and Recent Labour Market Developments and Prospects in OECD Countries, OECD Employment Outlook (2007), at 17–53 (Mar. 5, 2022), available at <https://www.oecd.org/els/emp/40776587.pdf>.

- residence in a village or town – people living in rural areas (80.0 percent) are twice as likely to be in informal employment compared to those living in urban areas (43.7 percent);

- type of economic activity – agriculture is the industrial sector with the highest level of informal employment in the world (93.6 percent). Informality has a lower impact on industry (57.2 percent) and services (47.2 percent);

- gender – globally, men (63.0%) outnumber women (58.1 percent) in terms of informal employment. This is true for averages in both emerging and developed countries and for informal employment in agriculture as well as in the non-farm sector. Just over 740 million of the 2 billion workers employed in the informal sector worldwide are women. However, this global picture is the result of the influence of large countries such as China or the Russian Federation, where female employment is high. In contrast, in low and middle-income countries, the share of women employed in the informal sector is higher than that of men. The picture is different in Africa, however, where 89.7 percent of employed women work in the informal sector.<sup>9</sup>

In India, the majority of informal workers are own-account women workers, domestic workers with and without contracts, as well as own-account entrepreneurs and temporary workers. In Brazil, informal employment is also characterized by an increase in female employment in household services. In China, informal employment is most common among undeclared agricultural migrants and workers who have been laid off or sent on forced leave from state-owned enterprises.

The problem of unemployment is closely related to the problem of informal employment. In 2020–2021, unemployment in Brazil grew by approximately 14.6 percent, with the labor market losing more than 1.1 million jobs. In both Russia and China, the unemployment rate is around 6 percent. In May 2021, the unemployment rate in India was 27.1 percent. South Africa has the highest unemployment rate, accounting for more than 45 percent of the country's population.

As a result, the characteristic feature of the BRICS countries is the compensation of high levels of unemployment through the transition of workers to the informal economy, which reduces the opportunities for social protection for the working population. At the same time, labor supply will grow both in terms of quantity and quality, which raises the question of how to create new jobs that meet the demands of the innovation economy.

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<sup>9</sup> ILO, *Women and Men in the Informal Economy: A Statistical Picture* (3<sup>rd</sup> ed. 2018) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_626831.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf).

### 3. Correlation of the Terms “Informal,” “Non-Standard” and “Precarious” Employment

There is still no consensus in the literature on the definition of “informality,” but there is a general feeling that the world of work in all emerging countries is characterized by a high level of informality, defined as the absence of business registration, social security or employment contract.<sup>10</sup>

In 2003, the 17<sup>th</sup> International Conference of Labour Statisticians adopted “Guidelines Concerning a Statistical Definition of Informal Employment.”<sup>11</sup> According to paragraph 3 of the guidelines, “informal employment” comprises the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises, or households, during a given reference period. These jobs could be those that are held by own-account workers and employers employed in their own informal sector enterprises; contributing family workers, irrespective of whether they work in formal or informal sector enterprises; employees holding informal jobs in formal sector enterprises, informal sector enterprises, or as paid domestic workers employed by households; members of informal producers’ cooperative and own-account workers engaged in the production of goods exclusively for their own final use by their household.<sup>12</sup>

As a result, the classification of workers as formal or informal is made according to the nature of the employment relationship in which they participate, that is, according to the characteristics of jobs within entire production units, rather than on the basis of the characteristics of the production units themselves. As a result, a worker is considered informally employed, if he or she is not subject to the formal restrictions imposed by the state regulating the use of labor and its remuneration. That is to say, the informally employed do not have a formal employment relationship in accordance with the current national legislation.

The concept of “informal economy” is formalized in ILO Recommendation 204 and in provisions of the BRICS Labour and Employment Ministers Declaration

<sup>10</sup> ILO, *Women and Men in the Informal Economy: A Statistical Picture (2002 and 2012)* (Mar. 5, 2022), available at <https://europa.eu/capacity4dev/file/25589/download?token=TwowLfpS>; Johannes P. Jütting & Juan R. de la Iglesia, *Is Informal Normal? Towards More and Better Jobs in Developing Countries*, OECD (2009) (Mar. 5, 2022), available at [https://www.e-regulations.org/media/website/OECD\\_is\\_informal\\_normal.pdf](https://www.e-regulations.org/media/website/OECD_is_informal_normal.pdf); Marc Bacchetta et al., *Globalization and Informal Jobs in Developing Countries*, ILO/World Trade Organization (2009) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_115087.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_115087.pdf).

<sup>11</sup> Рекомендации, касающиеся статистического определения неформальной занятости [Guidelines Concerning a Statistical Definition of Informal Employment] (Mar. 5, 2022), available at <https://www.ilo.org/public/english/bureau/stat/download/guidelines/russian/defempl.pdf>.

<sup>12</sup> Ralf Hussmanns, *Measuring the Informal Economy: From Employment in the Informal Sector to Informal Employment*, Working Paper No. 53, Policy Integration Department, Bureau of Statistics, International Labour Office (December 2004) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_079142.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079142.pdf).

“Quality Jobs and Inclusive Employment Policies” which allow it to be established that informal employment must be understood as workers and economic units involved in economic activities that are – in law or in practice – not covered or insufficiently covered by formal arrangements and that are not engaged in illegal activities. We believe that the above definition of “informal employment” is extremely broad and vague, including various forms of employment, both those regulated and not regulated by national legislation.

In addition, international documents use concepts that are similar to the concept of informal employment. In contrast to “standard employment,” which is defined as “full-time employment based on an employment contract in an enterprise or organization, under the direct supervision of an employer or his designated managers,”<sup>13</sup> the concept of “non-standard employment” has emerged as a result of globalization and the development of new technologies. If, on the other hand, informal employment is an unformulated relationship that is not regulated in accordance with the current national legislation, then non-standard employment presupposes the legal regulation of these relations, but with differences in the length of working hours and also presupposes their existence with more than one employer.

ILO specialists distinguish four non-standard forms of employment:

- temporary employment (fixed-term employment contracts, including contract for work on a project or one-time assignments, seasonal work; one-time work, including one-day work);
- part-time work (including on-demand work as well as “zero hours” contracts);
- an employment relationship involving more than two parties (agency work, subcontracting and such.);
- hidden employment and dependent own-account work (labor relations misrepresented as civil law, etc.).<sup>14</sup>

It should be noted that non-standard employment, unlike informal employment, does not necessarily cause insecurity in the sphere of labor. For example, working under a fixed-term employment contract or working on a part-time basis, despite being types of non-standard employment, has long been regulated by legislation. Employees in such employment enjoy nearly full guarantees, which allow us to talk about their social protection.

The conclusion of civil-law contracts with employees should also be classified as non-standard employment. The main motivation of employers to disguise labor

<sup>13</sup> Федченко А.А., Колесникова О.В., Дашкова Е.С., Дорохова Н.В. Неформальная занятость: теоретические основы, исследование, прогноз [Anna A. Fedchenko et al., *Informal Employment: Theory, Research, Forecast*] 28 (2016).

<sup>14</sup> ILO, Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects (2016), at xxii (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_534326.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_534326.pdf).

relations under the guise of civil law in most countries is related to the costs of ensuring the labor rights of employees. In order to prevent such violations, legislators in Russia have introduced norms in the tax legislation (Art. 420 of the Tax Code of the Russian Federation) requiring the payment of insurance premiums for mandatory social insurance from payments and other remuneration in favor of individuals, paid to them as part of labor relations and under civil law contracts, the subject of which is the performance of work and the provision of services.

Precarious employment, which includes new forms of employment, such as work based on temporary contracts for the provision of workers (personnel) through private employment agencies, work acquired through Internet platforms, work based on verbal agreements between an employee and an employer that are not formalized by any contracts and own-account work, can be identified as a type of non-standard employment. According to estimates of the International Labour Organization, precarious employment can affect all jobs, regardless of the form of employment relationship.<sup>15</sup> Second, precarious employment affects workers who have entered into atypical labor contracts or “quasi-labor” contracts, in which the purpose of the contract is not the creation of an employment relationship, but the provision of services (work based on Internet platforms). In addition, when considering the issues of precarious employment, the focus is frequently shifted from labor relations to civil law relations, and the key players for researchers are no longer workers but entrepreneurs and own-account workers.

As a result, in our opinion, informal employment and non-standard employment are mutually exclusive concepts, since informal employment presupposes the existence of unformulated relations in accordance with the procedure established by law, whereas non-standard employment presupposes the legal regulation of these relations, but it differs from “standard” labor relations, in that it assumes full working hours and the existence of labor relations with a single employer. Non-standard and informal employment can affect any person and reduce the level of social protection provided to employees, the stability of labor relations and the entire system of traditional labor legislation as a whole. Furthermore, it can also undermine the social function of labor law that is inherent in an industry: there are no guarantees of permanent employment and employees do not fully enjoy the benefits and advantages provided by labor legislation.

Precarious employment is a type of non-standard employment that is characterized, not only by the loss of the employee’s standard labor relations based on an indefinite employment contract with a full working week, but also by the temporary nature of employment (for example, fixed-term employment contracts, including contracts for work within a project or one-time assignments, seasonal work; single jobs, including one-day jobs). The existence of precarious employment also

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<sup>15</sup> ILO, *supra* note 14, at 19.

reduces the level of social protection provided to employees, as well as the stability of labor relations, since it generates negative consequences such as uncertainty in employment planning, loss of meaning in work and, clearly, a lack of societal recognition of such employment.

#### **4. Increasing the Number of Formal Jobs as a Condition for the Transition to Formal Employment**

When the BRICS countries signed the Declaration in Ufa in 2015, they recognized the need to emphasize the formalization of national labor markets, as well as the need to develop a well-balanced medium-term strategy for the formalization of labor markets as described in ILO Recommendation 204. In accordance with ILO Recommendation 204, it is expected to address informality, including by promoting the creation, preservation and stability of enterprises and decent jobs in the formal sector of the economy, as well as the coherence of policies in macroeconomics, employment, social protection and other social programs. We believe that one of the reasons for the existence and growth of informal employment is the insufficient flexibility of the labor market, in particular, with the limited offer of formal jobs, including non-standard employment. This is especially important for some categories of workers as well as certain social groups who are permanently facing employment difficulties, such as graduates of educational institutions, persons with family obligations, pre-retirees and retirees.

As documented in the BRICS Declaration, the challenges and prospects for creating quality formal jobs and making them more accessible to job seekers vary from country to country. Nevertheless, all countries agree that the following issues constitute the basis for developing high-quality formal jobs and increasing formal employment: for example, integration of policies that promote job creation and income opportunities in the formal economy; creation of formal employment opportunities through enterprise modernization and performance improvement; development of labor market infrastructure; investing in skills that meet the requirements of the formal economy and others. As we can see, the given list includes political, economic, social and legal measures.

In particular, according to clause 6 of the Declaration, the BRICS countries agreed to focus policy measures on improving the quality and inclusion of employment by promoting, among other things, the development of occupational standards and qualifications and increasing the quality of vocational education and training of workers in line with occupational standards and qualifications that consider current and future requirements of business.

Clearly, more opportunities to upgrade skills and retrain groups in vulnerable positions are required in order to obtain formal employment. It has been established, for example, that shadow employment is prevalent among the youngest workers. This

creates a situation in which young workers gain their first experience of employment under conditions of informal employment or formal employment with partial concealment of income. However, such a labor market entry trajectory fosters a tolerant attitude toward shadow employment and shadow income among the population and may have a significant impact on the subsequent behavior of workers.

As a result, a possible area of activity to reduce the prevalence of such practices could be the policy to promote official employment of students and graduates, which could include the development of cooperation between educational institutions and relevant employers, the creation of a system of official student internships with the possibility of further employment upon graduation and the creation of a database of jobs for specialists without work experience.

The most important prerequisite for economic development, reduction of unemployment, formal employment growth and improving competitiveness of the BRICS countries is the existence of a developed educational system that forms a new layer of young highly qualified specialists who are able to work successfully, including in the framework of partnership. In order to work out a joint policy on the development of education, the BRICS countries have step by step created a legal foundation for cooperation in this sphere. The most important documents issued as a result of the BRICS summits set out strategic guidelines for joint cooperation. In the joint statement of the BRICS leaders made on 16 June 2009 in Yekaterinburg, the BRICS countries confirmed their intention to promote cooperation in science and education and for basic research.<sup>16</sup> The Delhi Declaration, adopted as a result of the fourth BRICS summit on 29 March 2012, supports the expansion of channels of communication, exchange programs and contacts between citizens within the framework of BRICS in the fields of youth exchange and education.<sup>17</sup> The Fortaleza Declaration, adopted as a result of the sixth BRICS summit on 15 July 2014, states the need to explore opportunities for mutual cooperation in the recognition of higher education documents and diplomas, to ensure equal, inclusive and quality education and learning opportunities for all, and supports further cooperation with international organizations as well as the initiative to establish the BRICS Network University.<sup>18</sup> The Ufa Declaration, adopted as a result of the seventh BRICS summit on 9 July 2015, notes the relationship between investment in education, human capital development, and growth in economic performance; recognizes the importance of vocational education as a tool for expanding youth employment opportunities and

<sup>16</sup> Совместное заявление лидеров стран БРИК // Президент России. 16 июня 2009 г. [Joint Statement of the Leaders of the BRIC Countries, President of Russia, 16 June 2009] (Mar. 5, 2022), available at <http://www.kremlin.ru/supplement/209>.

<sup>17</sup> Делийская декларация // Президент России. 29 марта 2012 г. [Delhi Declaration, President of Russia, 29 March 2012] (Mar. 5, 2022), available at <http://www.kremlin.ru/supplement/1189>.

<sup>18</sup> Документы VI саммита БРИКС // Президент России. 15 июля 2014 г. [Documents of the 6<sup>th</sup> BRICS Summit, President of Russia, 15 July 2014] (Mar. 5, 2022), available at <http://www.kremlin.ru/supplement/4738>.

student mobility; and encourages exploration of opportunities for cooperation in training skilled personnel by sharing ideas and information through top platforms, such as WorldSkills.<sup>19</sup>

Therefore, the development of education is the basis for the development of high-quality formal jobs and for increasing formal employment, which is recognized by the BRICS countries and recorded in joint documents. Joint activities in this direction are aimed at the development of quality education, and obtaining relevant and competitive knowledge, skills and competencies, which would provide young specialists with the opportunities for further employment in the formal economy both in their home country and abroad. At the same time, the need for cooperation, for example, in providing highly qualified engineering personnel, is confirmed by the assumption that if the BRICS countries can train a sufficient number of highly qualified engineers and scientists, the poles of technical innovation may gradually move here from the USA, Europe and Japan.<sup>20</sup> Such a situation will certainly contribute not only to the creation of new quality jobs, but also to the reduction of informal employment, which is fully consistent with the objectives of ILO Recommendation 204 and the BRICS Labour and Employment Ministers Declaration "Quality Jobs and Inclusive Employment Policies" adopted in 2016.

## **5. Involvement of Unregulated Forms of Labor in the Legal Field**

As previously stated, according to ILO Recommendation 204, the informal economy represents economic activities that are not covered or insufficiently covered by the existing national legislation.

Relationships conditioned by the information technology revolution are actively developing and becoming more complicated, and the law is too late to cover them in a preventive way. This generates a number of challenges related to the technical aspects of the legal organization of labor of people employed in these forms of employment, as well as the protection of their labor rights. Changes in people's lifestyles as a result of information technology have begun to radically affect the sphere of human labor activity as well.

In 2015 the European Foundation for the Improvement of Working and Living Conditions (Eurofound) published a study dedicated to the so-called new forms of employment.<sup>21</sup> Such new forms include:

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<sup>19</sup> Документы, принятые по итогам саммита БРИКС // Президент России. 9 июля 2015 г. [Documents Adopted Following the BRICS Summit, President of Russia, 9 July 2015] (Mar. 5, 2022), available at <http://www.kremlin.ru/supplement/5002>.

<sup>20</sup> Martin Carnoy et al., *University Expansion in a Changing Global Economy: Triumph of the BRICs?* (2013).

<sup>21</sup> Eurofound, *New Forms of Employment* (2015) (Mar. 5, 2022), available at [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1461en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en.pdf).

- job sharing (work sharing) is an employment relationship in which one employer hires several (usually two) workers to perform a single job function together, resulting in full-time work;<sup>22</sup>

- casual work is a type of work in which the employment is not stable or long-term in duration, and the employer is not required to provide work on a regular basis, but has the right to call the employee in as needed;

- Information Communication Technology (ICT) based mobile work is a work relationship that occurs in part, but on a regular basis, outside of the main office owned by the employer or a specially adapted home office that uses ICT to connect to the company's general computer networks;<sup>23</sup>

- crowd working (also known as crowd sourcing, crowd employment) is employment in which a special online platform is used for communication between the person doing the work and the customer.<sup>24</sup>

Among all of the new forms of employment mentioned above, platform employment is of particular interest and became even more popular in 2020–2021 due to the COVID-19 pandemic. According to the American magazine *Foreign Policy*, the largest platform economy in the world has emerged in China, with 15 percent of the total workforce employed in platform employment. In India, there are an estimated 3 million platform workers in the country's 500 million-strong labor force.<sup>25</sup> In Brazil, platform employment is the sole source of income for over 5 million people, with another 11 million people earning additional income from digital platforms.<sup>26</sup> At

<sup>22</sup> ILO, *Work Sharing During the Great Recession: New Developments and Beyond* (Naj Ghosheh & Jon C. Messenger eds., 2013) (Mar. 5, 2022), available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_187627.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_187627.pdf).

<sup>23</sup> Elena Gerasimova et al., *New Russian Legislation on Employment of Teleworkers: Comparative Assessment and Implications for Future Development Law*, 2 *Law. Journal of the Higher School of Economics* 116, 124–28 (2017); Закалюжная Н.В. Дистанционная работа и схожие правоотношения // *Право. Журнал Высшей школы экономики*. 2015. № 2. С. 76–91 [Natalia V. Zakalyuzhnaya, *Telecommuting and Similar Legal Relations*, 2 *Law. Journal of the Higher School of Economics* 76 (2015)].

<sup>24</sup> Anne Green & Sally-Anne Barnes, *CrowdEmploy Part I: Crowdsourcing for Paid Work. An Empirical Investigation into the Impact of Crowdsourcing for Paid Work on Employability*, Warwick Institute for Employment Research/Institute for Prospective Technological Studies (2013); Чесалина О.В. От нестандартных форм занятости до работы на основе интернет-платформ // *Трудовое право в России и за рубежом*. 2018. № 1. С. 22–25 [Olga V. Chesalina, *From Non-Standard Forms of Employment to Internet Platform Work*, 1 *Labor Law in Russia and Abroad* 22 (2018)].

<sup>25</sup> Nilanjan Banik, *Opinion: India's Gig Economy Needs Affirmative Policy Push*, *The Economic Times* (India), 6 January 2020 (Mar. 5, 2022), available at <https://government.economictimes.indiatimes.com/news/economy/opinion-indias-gig-economy-needsaffirmative-policy-push/73121847>.

<sup>26</sup> Guilherme N. Pires, *Gig Economy, Austerity and "Uberization" of Labour in Brazil (2014–2019)*, *World Economics Association (WEA) Conferences*, No. 1, 2019, *Going Digital*, 15<sup>th</sup> November to 20<sup>th</sup> December, 2019 (Mar. 5, 2022), available at <https://goingdigital2019.weaconferences.net/papers/gig-economy-austerity-and-uberization-of-labor-in-brazil-2014-2019/>.

the same time, according to the estimates of Instituto Locomotiva, approximately 17 million people use platforms on a regular basis to generate income.<sup>27</sup>

Regarding other forms of employment, for example, Brazilian Law No. 13467/2017 introduced a new work format known as “the temporary (employment) contract” that allows employers to engage workers as employees to provide services on a temporary basis and helps employers maintain a flexible workforce that is ready to provide services when needed. This law has established guarantees for employees. For example, they cannot be paid less than the minimum hourly wage of other company employees who work in the same position under a fixed-term or open-ended employment contract. They are also entitled to a full package of social benefits and allowances. The possibility of using “temporary contracts” by platforms is being discussed, which could limit the amount of informal employment that occurs as a result of people using Internet platforms for work.<sup>28</sup>

The emergence of work based on Internet platforms is, on the one hand, a natural outcome of certain trends in the labor market: the transfer of economic risks from the employer to the employee; the increase in the number of own-account workers; and the proliferation of non-standard labor legal relations and informal employment. On the other hand, the model of work facilitated by means of Internet platforms became possible only due to the development of information technologies (wide use of Internet and cloud technologies). Moreover, platform providers can use this technology to implement completely new mechanisms of control over the labor process (which, nevertheless, still involves a person).<sup>29</sup> The characteristic features of such control are the extent to which information technologies allow control over the activities of the worker (performer) and the lack of physical manifestation of the implementation of such control.<sup>30</sup> Modern technologies allow us to collect a large amount of data, process it, and implement certain management decisions automatically, for example, by sending electronic messages, controlling access to the platform and placing orders. In addition, platform providers take certain measures to avoid having the service provider categorized as an employee or a person who is similar to an employee (for example, they may limit the service provider’s work to only one particular client).<sup>31</sup>

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<sup>27</sup> Платформенная занятость: определение и регулирование [*Platform Employment: Definition and Regulation*] 16–17 (2021).

<sup>28</sup> *Id.*

<sup>29</sup> Jeremias Prassl, *Humans as a Service* 55 (2018); Alex Wood et al., *Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy*, 33(1) *Work Employ. Soc.* 56 (2018).

<sup>30</sup> Mirela Ivanova et al., *The App as a Boss?: Control and Autonomy in Application-Based Management* (2018) (Mar. 5, 2022), available at <https://cihr.eu/wp-content/uploads/2015/07/The-App-as-the-Boss.pdf>.

<sup>31</sup> Debra Howcroft & Birgitta Bergvall-Kåreborn, *A Typology of Crowdswork Platforms*, 33(1) *Work Employ. Soc.* 21 (2018).

As a result, the last decade has seen a clear departure from traditional, sustainable employment: in many areas and industries, monotonous labor that is closely controlled by the employer in detail is now progressively being replaced with automation, and occupations, which until recently created a lot of jobs are disappearing. Labor, regulated by the norms of labor law, is shifting to the service sector, which is characterized by the autonomy of the person doing the work and a commitment to results. One of the most striking manifestations of the impact of technological progress on labor relations is the spread of the platform or “gig economy” associated with labor through online platforms.

Today, there is no standard regulatory definition of platform employment. International organizations offer the following definitions, two of which are: a form of employment, in which organizations and individuals use an online platform to access other organizations or individuals to solve specific problems or to provide certain services in exchange for payment; or a non-standard form of employment in which online platforms and digital technology are used to mediate between individual service providers (contractors registered on the platform) and customers.<sup>32</sup>

According to the definitions, platform employment implies three participants: customer/client/buyer/consumer of services; contractor/performer/employee and the platform that connects supply and demand for a service. We believe that labor law can regulate the relationship between the platforms that will act as an employer for individuals who are not sole proprietors or own-account workers, with social guarantees, and who, like other workers, will be subject to minimum labor law guarantees.

We believe that platform employment will grow in popularity over time among persons who provide services directly, since it offers advantages compared to traditional forms of employment: in addition to the freedom to choose the scope and mode of work, it allows us to bypass the age limit and allows more participants to enter the labor market than is permitted by the current legislation. Additionally, it allows persons with family obligations, who are mobility impaired, handicapped, or have recently been released from prison, as well as everyone else who is having difficulty finding work, to receive income which significantly reduces the shadow economy. In this regard, it appears that this sphere should be regulated by the state. However, if in specific social and economic circumstances, platform employment is the only source of income to achieve a certain bare minimum level of income, the large amount of work performed and the lack of full rest can lead to irreparable consequences.

We believe that interest in platform employment will continue to grow, requiring legislation to regulate relationships with platform participants in the near future. We believe that legal regulation should first apply to individuals who engage in

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<sup>32</sup> Platform Employment, *supra* note 27, at 10.

relationships with platforms but do not have any other legal status. The requirement of the platform on the legality and admissibility of possessing such a status for an individual to become a participant in the relevant relations requires reflection, taking into account the social and economic environment in a country as well as demand on the part of citizens.

New social and economic conditions, as well as the active development of the digital economy have given the BRICS countries the task of transferring platform employment from informal to formal employment by creating the concept of regulating new relationships formed through the use of Internet technologies. We believe that new forms of employment should be gradually integrated into the realm of labor law regulation, and that workers should be provided with all necessary labor and legal protections. We share the opinion that the social value of labor law is to protect the interests of the weaker party and that, at the beginning of labor law, this party was the employee. In terms of platform employment, the labor market is currently characterized by an increase in atypical forms of employment that are organizationally and often economically dependent.

As a result, on the basis of the informal economy definition set out in ILO Recommendation 204, which refers to economic activities by workers and economic units that, in law or in practice, are not covered or insufficiently covered by formal arrangements and that are not engaged in illegal activities, it can be concluded that there is an urgent need for legal regulation of both platform employment and other forms of employment based on the use of digital technologies that currently have no legal regulation in any of the BRICS countries, which automatically moves them into the sphere of informal employment, thereby increasing it. Nevertheless, due to the development of digital technologies, more and more areas of economic activity are covered by digitalization, and an increasing number of citizens become participants in such relations, including those who traditionally constitute informal employment in all countries, such as young people, women and elderly people. We believe that once these relations are regulated, they will leave the sphere of informal employment, which will also contribute to the creation of quality jobs, as discussed in policy documents, both ILO Recommendation 204 and the BRICS Labour and Employment Ministers Declaration "Quality Jobs and Inclusive Employment Policies."

## **6. Extending Social Protection: The Role of Social Security in Facilitating Transition to a Formal Economy in the BRICS Countries**

Extending social security coverage to the population is one of the world's most strategic developments in social security. This international goal is defined in the United Nations Sustainable Development Goals for the period 2015 to 2030. In 2008, the International Social Security Association (ISSA) developed a project called "ISSA

Strategy for Social Security Coverage Extension,” and in 2011, a mutual project between ISSA and the BRICS countries’ social security organizations was launched.<sup>33</sup>

Let us review in detail the experience of the BRICS countries with social security coverage extension.

In Brazil, the principles of general coverage with allowances and services are reflected in the program *Bolsa Familia*, “Family Purse” which is focused on direct financial support to low-income and poor population. By 2016 this program covered over 50 million citizens. The program provides for the payment of a basic allowance in the amount of 89 rials per month for each household with a monthly income of up to 89 rials per person, as well as an additional monthly allowance in the amount of 41 rials per month for each child aged up to 16 years, pregnant women up to the ninth month of pregnancy and nursing women up to six months with a maximum of five allowances per family; and 48 rials per month for each child up to the age of 16–17 years, with a limit of up to two allowances per family. If the monthly income of a household per person, including basic and transient allowances, is less than 89 rials, the difference between the monthly income of the household and 89 rials shall be paid. The families shall also ensure that their children go to school and are vaccinated.<sup>34</sup> In line with this, experts note that despite progress in narrowing the gap, allowances and services appear to have reached their limits and continue to fall short of what may be considered a typifying welfare state, namely, “Dynamic Social Security.”<sup>35</sup>

The National Social Assistance Program (NSAP) directed at providing social pensions to all pensioners was introduced in India with the purpose of extending social insurance coverage. Rashtriya Swastya Bima Yojana (RSBY), a program that provides health care services to the poor, also efficiently operates. It is noteworthy that providing the population with access to health care is a primary task of coverage extension.

By the end of 2019, in China, basic age insurance covered 967 million people, insurance against industrial injuries covered 255 million people, insurance against unemployment covered 205 million people, medical insurance covered 1,354 billion people and maternity insurance covered 214 million people. This data shows that, except for medical insurance, there is a significant gap in insurance coverage, particularly in insurance against industrial injury, insurance against unemployment and insurance for maternity.<sup>36</sup>

<sup>33</sup> Рамочное сотрудничество в области социального обеспечения между странами БРИКС // ISSA [Framework Cooperation in the Field of Social Security Between the BRICS Countries, ISSA] (Mar. 5, 2022), available at <https://www1.issa.int/ru/brics>.

<sup>34</sup> International Social Insurance Association (2019) (Mar. 5, 2022), available at [www1.issa.int](http://www1.issa.int).

<sup>35</sup> Milko Matijascic & Stephen J. Kay, *Understanding the Brazilian Social Policy Model: Myths, Milestones and Dynamic Social Security*, 67(3-4) Int'l Soc. Secur. Rev. 105 (2014).

<sup>36</sup> Xiaoyan Qian, *China's Social Security Response to COVID-19: Wider Lessons Learnt for Social Security's Contribution to Social Cohesion and Inclusive Economic Development*, 73(3) Int'l Soc. Secur. Rev. 81 (2020).

In the Republic of South Africa (RSA), a large portion of government funds is spent on extending social security coverage. The Old Age Grant (OAG) program was established under which grants are paid in addition to pensions to senior citizens in South Africa based on income testing. It is estimated that this helped to reduce income inequality, as proven by a decrease in the Gini coefficient from 0.77 (without grants) to 0.60 (with grants).<sup>37</sup> Moreover, a system of child allowances has been introduced: the Child Support Grant (CSG) was developed in 1998 and covered poor children up to the age of seven, but it was expanded three times over a 12-year period in order to cover children up to the age of 18; the Foster Child Grant (FSG), which offered grants for adopted children up to the age of 15, was introduced in 2010, and since 2012, parents of adopted children up to 18 years of age may receive them.<sup>38</sup> The social security development trend in the RSA is extension of coverage, as well as the elimination of race discrimination.

The Russian Federation received the general social security system as a heritage from Soviet times, but significant political, economic and demographic transformations have led to the fact that general social security coverage is being challenged.<sup>39</sup> The principle of social security catholicity can still be seen in the provision of free medical and health care, the system of mandatory medical insurance,<sup>40</sup> the expansion of social security coverage through social pensions<sup>41</sup> and in the payment of allowances to both insured and uninsured citizens. Moreover, social support measures for the poor are being actively developed. They are target-focused and take into account the income of a lonely citizen or a family. Such an approach is traditionally stipulated in Federal Law of 17 July 1999 No. 178-FZ "On State Social Care." The Federal Law of 28 December 2017 No. 418-FZ "On Monthly Payments to Families with Children" connects the enforcement of the right to receive monthly payments due to the birth (or adoption) of a first or second child with the amount of family per-capita income that shall not exceed two minimum subsistence levels of

<sup>37</sup> ISSA, Ten Global Challenges for Social Security – 2019 (2019), at 64 (Mar. 5, 2022), available at <https://www.issa.int/sites/default/files/documents/publications/2-10-challenges-Global-2019-WEB-263629.pdf>.

<sup>38</sup> ISSA, BRICS Countries: Sustainability Challenges for Social Security Systems (2017) (Mar. 5, 2022), available at <https://www.issa.int/sites/default/files/documents/publications/2-BRICS%20report%202017-web-222129.pdf>.

<sup>39</sup> Проблемы Общей части права социального обеспечения: монография [*Problems of the General Part of the Social Security Law: Monograph*] 141 (Elvera G. Tuchkova ed., 2017).

<sup>40</sup> Федеральный закон от 29 ноября 2010 г. № 326-ФЗ «Об обязательном медицинском страховании в Российской Федерации» // СПС «КонсультантПлюс» [Federal Law No. 326-FZ of 29 November 2010. On Mandatory Medical Insurance in Russian Federation, SPS "ConsultantPlus"] (Mar. 5, 2022), available at [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_107289/](http://www.consultant.ru/document/cons_doc_LAW_107289/).

<sup>41</sup> Федеральный закон от 15 декабря 2001 г. № 166-ФЗ «О государственном пенсионном обеспечении в Российской Федерации» // СПС «КонсультантПлюс» [Federal Law No. 166-FZ of 15 December 2001. On State Pension Coverage in Russian Federation, SPS "ConsultantPlus"] (Mar. 5, 2022), available at [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34419/](http://www.consultant.ru/document/cons_doc_LAW_34419/).

working-age population stipulated in the subject of the Russian Federation. Under the Decree of the President of the Russian Federation of 20 March 2020 No. 199 "On Additional Measures for Government Support for Families with Children," a monthly allowance for a child aged 3–7 years shall be paid if the amount of family per-capita income does not exceed the amount of minimum subsistence level stipulated in the subject of the Russian Federation. Similar requirements are specified for the recipients of a monthly allowance for a child aged 8–17 years in the Federal Law of 26 May 2021 No. 151-FZ "On the Introduction of Changes into Specific Acts of Law of the Russian Federation."

Extending social security coverage using government social support tools that are mainly directed at combating poverty, may not solve the problem of achieving a decent social security level, because the amount of payments in this system is specified by the government based on the existing economic resources at a specific development stage and is not related to lost income.

We should note that the social protection system and taxation system are the basic foundations of the redistribution policy. Attempting to achieve universal social security by way of redistributing funds from taxpayers or contribution payers to those who do not pay them because they are employed in the informal economy sector may lead to "bleeding the government social security system white." Therefore, in order to achieve the goal of transitioning from informal to formal employment within the social security system, it is necessary to use other more efficient arrangements.

According to ILO data, over 60 percent of workers in the world are employed in the informal economy. Informal employment is also common in the BRICS countries. For example, the employment structure of China has shifted dramatically: the share of people employed in the tertiary sector increased from one third in 2010 to nearly half in 2019. The number of one-account worker workers in urban regions has nearly doubled, rising from 12.88 percent in 2010 to 24.05 percent in 2019.<sup>42</sup> This contradicts the traditional structure of social insurance programs granting services to workers employed on a stable and formal full-time basis and results in a huge gap in coverage. As a result, many people (particularly those employed in the informal sector of the economy) do not receive adequate social protection and have no access to specific protection measures.

According to researchers, changes in labor relations and employment structure directly influence the social protection system. The interrelation of labor law and the right to social protection is especially apparent in the social insurance field, as insurance is acquired during one's working life. Any changes in labor relations are reflected in the right of social protection. A decrease in the share of hired workers, a shorter working life, the emergence of so-called independent workers, the growth of self-employment and partial and illegal employment are just some

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<sup>42</sup> Qian 2020.

of the challenges of the twenty-first century to which social protection law should adapt.<sup>43</sup>

New employment forms offer new possibilities for the organization of social security, but the problems related to the narrowing of coverage and the decrease of payments should be settled too. In general, this may lead to weakening of the collective rights of workers, norms of safety and labor hygiene and social security programs. Instead, more time should be spent on strengthening the complementarity of general tax-financed and fee-based programs.

International law norms contain special provisions in this field. As a result, ILO Recommendation No. 204 (clauses 19 and 20) enables countries to resume their obligation to distribute social security to workers in the informal economy. ILO Recommendation dated 14 June 2012 No. 212 "On Minimum Social Protection Levels" (cl. 15) stipulates that strategies for widening social security coverage shall be applied to the persons employed in formal as well as in informal economies, and that they shall facilitate growth of employment in the formal sector and decrease informal forms of employment.

Based on the analysis of international acts, the authors conclude that the right to social security, including social insurance, is a basic human right that shall not depend on the type of economic sector one works in.<sup>44</sup>

ILO Recommendation dated 12 May 1944 No. 67 on ensuring income security assumes a differentiation of approach to the organization of social security for hired workers and one-account workers. Hired workers should be insured against the complete set of cases covered by the social insurance, and persons working on their own should be insured against invalidity, age and death under the same conditions as hired workers. Moreover, the government shall consider the possibility of their insurance against hospitalization caused by illness and maternity, against illnesses that lasts for several months and against special expenses caused by illness, maternity, invalidity and death (clauses 20–21).

As a rule, this approach is reflected in national legislation: social protection programs are developed taking into account workers' employment status as either hired or one-account workers. Nevertheless, at present, it is difficult to classify some employment forms into one of two categories. This implies a potential gap in the legislation, as well as the absence of collective rights in the fields of national, social and labor regulation and social protection for a part of the working-age population.

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<sup>43</sup> Васильева Ю.В., Шуралева С.В. К вопросу о становлении и современном состоянии парадигм российского трудового права и права социального обеспечения // Вестник Пермского университета. Юридические науки. 2018. Вып. 41. С. 454–477 [Julia V. Vasilyeva & Svetlana V. Shuraleva, *On the Formation and Current Status of the Paradigms of Russian Labor Law and Social Security Law*, 41 Perm University Herald. Juridical Sciences 454 (2018)].

<sup>44</sup> Nicola Smit & Lethlokwa G. Mpedi, *Social Protection for Developing Countries: Can Social Insurance Be More Relevant for Those Working in the Informal Economy?*, 14(1) L. Democr. Dev. 171 (2010).

The question then becomes, how can we organize efficient social protection for persons employed in the informal economy? Several variants are possible.

First, informal economy workers may be covered by social programs together with the unemployed. As a rule, coverage is provided indirectly via other family members and is directed at the provision of a minimum standard of living. However, it is important to note that government social support programs may promote a welfare mentality in society, even though the legislation of many countries requires confirmation of income or a specific legal status (for example, unemployed) as a condition for payments and services, which to some extent supports their legalization.

We believe that an optimal variant is one in which the government provides social support in addition to social insurance for economically active populations. Van Ginneken proves that the social security of informal economy workers and their dependents should be covered primarily by those who can contribute to their insurance from their working income.<sup>45</sup>

In the second variation, informal economy workers could be incorporated into existing social security systems thereby equating them with workers or one-account workers. This is how the problem of social security for digital platform workers, one of the categories of citizens employed in the informal economy, is being attempted to be resolved. In Europe, digital platform workers are considered, as a rule, as one-account workers, and corresponding acts of law in the field of social protection apply to them. However, some countries (Austria, Estonia and Switzerland) classify workers employed on digital platforms as hired workers if the legal relations between an employer and an employee are evident or may be actually proved. In France licensed taxi drivers are regarded as one-account workers in accordance with the labor legislation and as hired workers in accordance with the social security legislation, and in Austria, Poland and Hungary legislation in force stipulates treating digital platform workers as hired workers.<sup>46</sup>

Extension of social security coverage to informal economy workers does not require a complete review of social security systems. As a rule, the security of hired workers and one-account workers is stipulated by the social insurance system: the security level in this system is higher than what exists in the government social support system, as allowances replace lost wages and are increased depending on the length of pensionable service. However, there still remains the task of adapting traditional social security systems using legal regulation with the goal of guaranteeing the right to efficient social support because a range of key parameters

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<sup>45</sup> Wouter van Ginneken, *Social Security for the Informal Sector: Issues, Options and Tasks Ahead*, ILO Working Paper (1996) (Mar. 5, 2022), available at [https://labordoc.ilo.org/discovery/fulldisplay/alma993162103402676/41ILO\\_INST:41ILO\\_V1](https://labordoc.ilo.org/discovery/fulldisplay/alma993162103402676/41ILO_INST:41ILO_V1); Wouter van Ginneken, *Extending Social Security: Policies for Developing Countries*, ESS Paper No. 13 (2003) (Mar. 5, 2022), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=673121](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=673121).

<sup>46</sup> Christina Behrendt et al., *Social Protection Systems and the Future of Work: Ensuring Social Security for Digital Platform Workers*, 72(3) Int'l Soc. Secur. Rev. 17 (2019).

that are important for the organization of social insurance (such as salary, length of service, contribution management approach) in the case of informal workers have also changed. According to E. Machulskaya, implemented measures should be directed at the elimination or decrease of threshold values for minimum wage, working time and employment period; increasing system flexibility in the field of contribution gap periods; increasing allowance mobility and provision for efficient minimum allowance levels with the purpose of increasing coverage of nonstandard and one-account worker workers.<sup>47</sup>

However, in practice, organizing social security coverage of informal economy workers may face other obstacles. For example, in China one of the factors preventing complete social insurance coverage of informal employees is a decentralized social insurance management, which leaves them unprotected in the case of moving from one region to another.<sup>48</sup>

Moreover, the question of what fundamentals (voluntary or mandatory) define participation by those employed in the informal economy in the social security programs is a major issue. High insurance payments, as a result of their mandatory nature, frequently promote the transition to a black economy, with people declaring only a portion of their income from which contributions must be paid. In some programs, informal workers may pay contributions voluntarily, but they may also choose not to pay them. In this case, their decision may be a compromise between the price of participation and the possibility of gaining allowances.

In the third variant, the informally employed may be classified into a separate category with a special legal status in the field of social security. Experts recommend using such an approach, in particular for workers employed on digital platforms. However, there are concerns about potential negative consequences, such as attempts to avoid mandatory regulation and arbitration norms.<sup>49</sup>

In India, efforts are being made to regulate relations with those employed in the informal economy on a stage-by-stage basis. Bylaws approved in 2008–2009 (such as the Unorganised Workers' Social Security Act, 2008 (No. 33 of 2008) and the Unorganised Workers' Social Security Rules, 2009) stipulated the creation of social security systems for unorganized workers, such as home workers, one-account workers or workers hired in the unorganized sector, as well as workers in the organized sector who did not fall under any existing legal status. The Code on Social Security adopted in India in 2020 included previously implemented categories of workers as well as the concept of gig-workers (workers employed outside of traditional employer-employee relationships) and platform workers (workers being

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<sup>47</sup> Tatiana Anbrekht, *International Seminar "Labour Relations in the BRICS Countries in the Conditions of Precarization of Employment"*, 8(1) BRICS L.J. 163 (2021).

<sup>48</sup> Jiwei Qian & Zhuoyi Wen, *Extension of Social Insurance Coverage to Informal Economy Workers in China: An Administrative and Institutional Perspective*, 74(1) Int'l Soc. Secur. Rev. 79 (2021).

<sup>49</sup> ISSA, *supra* note 37, at 56.

out of the format of traditional employer relations, such as employees calling on companies or individuals via an online platform and performing work or services on a paid basis). Following registration, they are assigned a corresponding status.

The Indian Code on Social Security states that ensuring basic social security measures is a mutual obligation of the central government, platforms (aggregators) and workers. However, these norms are of a declarative nature and do not define the distribution of the responsibility between three subjects. The need to create federal and regional social security funds for gig-workers, platform workers, as well as one-account workers and unorganized workers is directly stated in the Code. It is noted that social guarantee schemes for workers in such categories may be funded through a combination of contributions from the central government, state governments and platforms (aggregators). The contribution of a platform (aggregator) will be calculated at the rate stipulated by the government and which will not exceed 102 percent of platform's annual turnover. However, such a contribution cannot exceed 5 percent of the amount paid to platform workers by the platform (aggregator). As a result of this recommendation, several platforms operating in India, including Amazon, Flipkart, Swiggy, Ola and Uber donated approximately USD 69 million (1 percent of annual turnover) to a social fund in 2021. But there are concerns that the stipulated amounts of social charges, although not excessive, may become burdensome for operating platforms, many of which are still balancing on the payback edge. Due to this, additional expenses may either lead to the compression of the national platform economy segment or become an additional burden for the contractors, decreasing their welfare.<sup>50</sup>

Similar measures are being implemented in Brazil. Since May 2018 digital platforms managed by transportation companies (such as Uber, 99, Lyft and Cabify) in Rio de Janeiro have been required to pay a tax in the amount of one percent for each trip made via their application. Moreover, drivers from the platforms shall register themselves and their vehicles with the Municipal Transport Department, thereby ensuring compliance with minimum standards for safety, comfort, hygiene and quality during the performance of services. At present, the Ministry of Economy is working on a resolution that will enforce the requirement for the registration of platform drivers as individual micro-entrepreneurs in the Institute with National Social Insurance (INSS). After registration, they will be eligible for a lower taxation rate in the amount of five percent of the minimum salary and social protection (i.e. sick leave, maternity allowance, disability allowance and pension).<sup>51</sup> Thus, special efforts are

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<sup>50</sup> Divya J. Shekhar, *Why the Code on Social Security, 2020, Misses the Real Issues Gig Workers Face*, Forbes India (2020) (Mar. 5, 2022), available at <https://www.forbe-sindia.com/article/take-one-big-story-of-the-day/why-the-code-on-social-security-2020-misses-the-real-issues-gig-workers-face/63457/1>.

<sup>51</sup> В Рио-де-Жанейро ввели налог на пользование Uber и другими транспортными приложениями // RTVI. 12 апреля 2018 г. [Rio de Janeiro Imposes a Tax on the Use of Uber and Other Transport Applications, RTVI, 12 April 2018] (Mar. 5, 2022), available at <https://rtvi.com/news/v-rio-de-zhaneyro-vveli-nalog-na-polzovanie-uber-i-drugimi-transportnymi-prilozheniyam/>.

being made in these countries to generate funds for further distribution of means for the purpose of extending social security.

Further we will consider the experience of Russia in attempting to apply the strategy of legal status definition for persons employed in the informal economy sector. In 2019, the obligation for hired workers to pay contributions in the amount of 30 percent of their payroll budget in support of mandatory social insurance together with hired workers covered by mandatory social insurance (relating to pension, health care, temporary disability and maternity), was extended to individual entrepreneurs, who saw their traditional category of "one-account workers" (who have benefits set out in the mandatory pension insurance system at a specified amount, with the allowance that additional amounts may be contributed; who participate in a mandatory medical insurance system, and who may voluntarily generate legal relations on mandatory social insurance in the case of temporary disability), transformed into a new formal category of "one-account workers" or professional income taxpayers. This reform had been considered for nearly ten years and was directed at legalization of citizens' income. But the social and legal status of those persons has seen no substantial improvement: they generate rights in the pension insurance system voluntarily, not mandatorily; they use medical services in the medical insurance system not as someone employed but as one unemployed; and they are deprived of the possibility to voluntarily generate legal action for mandatory social insurance in the case of temporary disability. Such regulation clearly demonstrates only the fiscal interest of the government, offering little back to a person performing a professional activity, and represents a violation of the balance between the interests of the individual person and the government.

## Conclusion

According to some researchers, changes in the labor market will necessitate a revision of the public agreement model.

Growth of informal employment is a vivid indicator of problems in the system. Efficient public agreement requires a decent balance between rights and obligations, efficient enforcement of the law and corresponding practices, as well as efficient reporting arrangements. If citizens do not trust the government, if the laws are not observed fairly and efficiently, if legal and institutional functioning basics are considered inefficient and if the taxation system is not considered as a fair and efficient arrangement for funding social needs, the compliance with the formal conditions of a public agreement reflected in the norms of law will stay low.<sup>52</sup>

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<sup>52</sup> Воронин Ю.В., Столяров А.В. К вопросу о выработке нового общественного договора // Вестник Университета имени О.Е. Кутафина (МГЮА). 2019. № 11. С. 94 [Yuriy V. Voronin & Andrey V. Stol-

We agree with this point of view and believe that until a balance of interests between the working population, employers (of those using labor) and the government is reached, until guarantees of safe working conditions and social protection of those employed in any employment forms are developed, society will seek new types of employment in the informal economy and the government, in turn, will try to lead these relations into the formal sector using the law. This balance can be achieved using the tools of labor law and social security law. After all, these industries were historically formed as a response to a public request to protect the rights and interests of an employee as a less protected side of the relationship from excessive exploitation by entrepreneurs and to ensure increased social protection of the economically active population, primarily through the use of the institution of compulsory social insurance. The choice of measures to ensure the transition from informal to formal employment, despite its global international significance, depends on the strategy of national social and economic policy of individual countries.

## References

Васильева Ю.В., Шуралева С.В. К вопросу о становлении и современном состоянии парадигм российского трудового права и права социального обеспечения // Вестник Пермского университета. Юридические науки. 2018. Вып. 41. С. 454–477 [Vasilyeva Yu.V. & Shuraleva S.V. *On the Formation and Current Status of the Paradigms of Russian Labor Law and Social Security Law*, 41 Perm University Herald. Juridical Sciences 454 (2018)]. <https://doi.org/10.17072/1995-4190-2018-41-454-477>

Воронин Ю.В., Столяров А.В. К вопросу о выработке нового общественного договора // Вестник Университета имени О.Е. Кутафина (МГЮА). 2019. № 11. С. 83–97 [Voronin Yu.V. & Stolyarov A.V. *On the Elaboration of a New Social Contract*, 11 Courier of Kutafin Moscow State Law University (MSAL) 83 (2019)].

Закалюжная Н.В. Дистанционная работа и схожие правоотношения // Право. Журнал Высшей школы экономики. 2015. № 2. С. 76–91 [Zakalyuzhnaya N.V. *Telecommuting and Similar Legal Relations*, 2 Law. Journal of the Higher School of Economics 76 (2015)].

Чесалина О.В. От нестандартных форм занятости до работы на основе интернет-платформ // Трудовое право в России и за рубежом. 2018. № 1. С. 22–25 [Chesalina O.V. *From Non-Standard Forms of Employment to Internet Platform Work*, 1 Labor Law in Russia and Abroad 22 (2018)].

Anbrekht T. *International Seminar "Labour Relations in the BRICS Countries in the Conditions of Precarization of Employment,"* 8(1) BRICS L.J. 163 (2021). <https://doi.org/10.21684/2412-2343-2021-8-1-162-169>

Behrendt C. et al. *Social Protection Systems and the Future of Work: Ensuring Social Security for Digital Platform Workers*, 72(3) Int'l Soc. Secur. Rev. 17 (2019). <https://doi.org/10.1111/issr.12212>

Carnoy M. et al. *University Expansion in a Changing Global Economy: Triumph of the BRICs?* (2013). <https://doi.org/10.11126/stanford/9780804786010.001.0001>

Gerasimova E. et al. *New Russian Legislation on Employment of Teleworkers: Comparative Assessment and Implications for Future Development Law*, 2 Law. Journal of the Higher School of Economics 116 (2017). <https://doi.org/10.17323/2072-8166.2017.2.116.129>

Matijascic M. & Kay S.J. *Understanding the Brazilian Social Policy Model: Myths, Milestones and Dynamic Social Security*, 67(3-4) Int'l Soc. Secur. Rev. 105 (2014). <https://doi.org/10.1111/issr.12050>

Qian X. *China's Social Security Response to COVID-19: Wider Lessons Learnt for Social Security's Contribution to Social Cohesion and Inclusive Economic Development*, 73(3) Int'l Soc. Secur. Rev. 81 (2020). <https://doi.org/10.1111/issr.12246>

Smit N. & Mpedi L.G. *Social Protection for Developing Countries: Can Social Insurance Be More Relevant for Those Working in the Informal Economy?*, 14(1) L. Democr. Dev. 171 (2010). <https://doi.org/10.4314/ldd.v14i1.4>

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